IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.9.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.Nos.2380 to 2385 of 2006

Anil Kumar Fomra (HUF),
126, Mint Street,
Sowcarpet, Chennai 79 ... Appellant in T.C. 2380 & 2381/2006

Aditya Kumar Fomra
126, Mint Street,
Sowcarpet, Chennai 79 ... Appellant in T.C. 2382/2006

Aditya Kumar Fomra (HUF)
126, Mint Street,
Sowcarpet, Chennai 79 ... Appellant in T.C. 2383/2006

Aditya Kumar Fomra (HUF)
126, Mint Street,
Sowcarpet, Chennai 79 ... Appellant in T.C. 2384/2006

Aditya Kumar Fomra
126, Mint Street,
Sowcarpet, Chennai 79 ... Appellant in T.C. 2385/2006

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vs.

The Commissioner of Income Tax
Chennai. .. Respondent in all appeals

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PRAYER: Appeal under Section 260A of the Income Tax Act, against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 21.7.2006 in ITA.Nos.2946 to 2951/Mds/05 for the assessment years 1997-98, 1998-99, 1997-98, 1997-98, 1998-99, 1998-99.

ITA.Nos.32/2005-06 dated 29.11.2005
ITA.Nos.31/2005-06 dated 28.11.2005
ITA.Nos.36/2005-06 dated 29.11.2005
ITA.Nos.34/2005-06 dated 29.11.2005
ITA.Nos.33/2005-06 dated 29.11.2005
and ITA.Nos.35/2005-06 dated 29.11.2005

on the file of Commissioner of Income Tax, (Appeals) X, 121, Mahatma Gandhi Road, Chennai-34 against PAN/GIR No.AAAPF 5858 P.4200-A dated 11.3.2005 (in TC.Nos.2380 and 2381/2006) AAAMA.1385-G/4201-A; dated 11.3.2005 (in TC.No.2383/2006) AAAMA.1385-G/4201-A; dated 11.3.2005 (in TC.No.2384/2006) on the file of Assistant Commissioner of Income Tax, Circle X, Chennai-6 AAAPF 2633E/47516-A, dated 24.3.2005 on the file of Income Tax Officer, Ward X (1) Chennai-6 (in TC.Nos.2382 and 2385/2006)

For Appellants : Mr.T.N.Seetharaman
For respondent : Mr.N.Muralikumaran,
Sr.Standing Counsel (IT)

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

These appeals are directed against the common order dated 21.7.2006 made in I.T.A.Nos.2946 to 2951/Mds/2005of the Income Tax Appellate Tribunal Madras 'A' Bench, raising the following common substantial questions of law:

1. Whether on the facts and in the circumstances of the case the Income-tax Appellate Tribunal is right in law in holding that in acquisition proceedings of land belonging to the assessee made by the State Government, the amounts received as per interim conditional orders of the Court when the appeal by the State objecting to the enhancement of compensation was pending were liable to tax?

2. Whether on the facts and in the circumstances of the case, Section 45(5)(c) of the Income-tax Act inserted by the Finance Act, 2003 w.e.f. 1.4.2004 is applicable for the assessment years 1997-98 and 1998-99?

3. Whether on the facts and in the circumstances of the case the Income-tax Appellate Tribunal was right in not referring to and not following the decision of this Hon'ble

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Court in the case of CWT/IT vs. T.Girija Ammal (282 ITR 614) cited and relied on before the Appellate Tribunal?

2.1. The assessment years with which we are concerned are 1997-98 and 1998-99. The assessees are the appellants herein. The assessees are co-owners of the property comprising land and building at No.83 & 84 (Part), Acharya Jagdish Chandra Bose Road, Kolcutta which was subjected to land acquisition proceedings under the West Bengal Land (Requisition and Acquisition) Act. The Land Acquisition Officer awarded compensation which was enhanced by the Additional Special Land Acquisition Judge, Alipore by order dated 22.2.1994.

2.2. As against the enhancement of compensation, the State filed appeals before the Calcutta High Court. The Calcutta High Court passed an interim order dated 25.4.1995 directing the State of West Bengal to deposit the award amount of which the co-owners were permitted to withdraw 50% on condition. Accordingly, the co-owners withdrew amounts on 22.4.1996 and 2.4.1997. The appeals filed by the State were ultimately dismissed by the Calcutta High Court on 3.3.2002. Since the State did not file any further appeal, the award of enhanced compensation reached finality in July, 2000, when the time limit to prefer appeal expired.

2.3. The assessing officer reopened the assessments for assessment years 1997-98 and 1998-99 under section 147 of the Income-tax Act and made reassessments bringing to tax the amounts received by the assessees as per interim directions of the Calcutta High Court as additional compensation assessable as capital gains under section 45(5)(b) of the Income-tax Act.

2.4. The Commissioner of Income-tax (Appeals) dismissed the appeal filed by the assessees. On further appeal, the Appellate Tribunal upheld the order of the Commissioner of Income-tax (Appeals). Hence, the present appeal.

3. The primary issue that arises in all the appeals is as to the taxability of compensation received pending appeals before the Calcutta High Court. It is not in dispute that pending the appeals filed against the award of compensation, the assessees withdrew the award amounts as per interim orders of the Calcutta High Court, which were brought to tax.

4. Learned counsel for the appellants submitted that the assessees received the amounts pending appeals which reached its finality subsequently and hence, for the assessment years in question, the amounts cannot be treated as additional compensation till the final outcome of the appeals. According to him, the amounts received were ad hoc conditional payments and the determination of the enhanced compensation became final after the judgment of the Calcutta High Court.

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5. On the other hand, learned senior standing counsel appearing for the Revenue contended that the assessees received the amounts on 22.4.1996 and 2.4.1997 and hence, the amounts should be construed as additional compensation charged on receipt basis under section 45(5)(b) of the Income-tax Act.

6. Before proceeding further, it is apt to refer section 45 (5) of the Income-tax Act as under:

> "45(5) Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and the compensation or the consideration for such transfer is enhanced or further enhanced by any court, tribunal or other authority, the capital gain shall be dealt with in the following manner, namely:--
>
> (a) the capital gain computed with reference to the compensation awarded in the first instance or, as the case may be, the consideration determined or approved in the first instance by the Central Government or the Reserve Bank of India shall be chargeable as income under the head "Capital gains" of the previous year in which such compensation or part thereof, or such consideration or part thereof, was first received; and
>
> (b) the amount by which the compensation or consideration is enhanced or further enhanced by the court, tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which such amount is received by the assessee.
>
> (c) where in the assessment for any year, the capital gain arising from the transfer of a capital asset is computed by taking the compensation or consideration referred to in clause (a) or, as the case may be, enhanced compensation or consideration referred to in clause (b), and subsequently such compensation or consideration is reduced by any court, Tribunal or other authority, such assessed capital gain of that year shall be recomputed by taking the compensation or consideration as so reduced by such court, Tribunal or other authority to be the full value of the consideration."

7. A reading of the above provision shows that the amount of additional compensation should be deemed to be income chargeable in the previous year in which such amount is received by the assessees. In the present case, the assessees received the amounts

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on 22.4.1996 and 2.4.1997. The amounts so received would normally have been brought to tax in the assessment years in question, but for the fact that the amounts were received pending appeal, that too, on the basis of conditional interim order passed by the Calcutta High Court.

8. This Court in identical situation in Commissioner of Wealth-tax/Income-tax v. Smt. T. Girija Ammal [(2006) 282 ITR 614], held that the additional compensation received could not be treated as part of the compensation received for the transfer of the land until it was finally determined by the High Court or the Supreme Court. This Court held as under:

> ".... the additional compensation awarded by the civil court had not been accepted by the State Government and it has preferred an appeal objecting to the enhancement. Hence, the additional compensation received, could not be treated as part of the compensation received for the transfer of the land until it is finally determined by the High Court or Supreme Court. If the appeal of the State is allowed, the assessee is bound to refund the amount and hence, the same cannot be assessed before reaching finality. The right to receive additional amount awarded by the court as part of the compensation, was only an inchoate right during the pendency of the matter before higher judicial forums. In such circumstances, the disputed compensation has to be assessed only when it is finally determined by the higher Courts."

9. We are of the view that the amounts received by the assessees cannot be assessed before the appeals pending before the Calcutta High Court reached their finality, which are said to have been dismissed on 20.4.2000. Following the ratio laid down in T.Girija Ammal case, cited supra, we hold that the right on the amounts received by the assessees as part of the compensation, was only an inchoate right during the pendency of appeals before the Calcutta High Court and the amounts could be assessed only when the appeals were finally determined by the Calcutta High Court. Hence, it cannot be stated that right over the amounts had accrued to the assessee on the date of receipt. The Appellate Tribunal only considered the effect of amendment to section 45(5) of the Act and concluded that the amounts so received by the assessees are chargeable to tax as capital gain on receipt basis, but failed to take note of the fact that the amounts were received pending appeals. We therefore hold that the Appellate Tribunal was not right in holding that the amounts received as per interim conditional orders of the Court were liable to tax.

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10. In the view we have taken, it is not necessary to go into (i) the question of applicability of section 45(5)(c) of the Income-tax Act; and (ii) the question of non-consideration of the decision of this Court in T.Girija Ammal case [(2006) 282 ITR 614] by the Tribunal.

In the result, the first question of law referred to us is answered in negative, in favour of the assessee and against the Revenue and other two questions are not answered as they have become academic, in the view we have taken. The appeals are ordered accordingly. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai.
2.The Commissioner of Income Tax
(Appeals)-X, Chennai.
3.The Asst.Commissioner of Income-tax,
Circle X, Chennai.
4. the Income Tax Officer,
Ward X (1), Chennai-6
5.The Commissioner of Income Tax,
Chennai.

1 cc to Mr.T.N.Seetharaman, Advocate, SR.41247
2 ccs to Mr.Muralikumaran, Advocate, SR.40867, 40868

akm (co)

dv./10.10.06

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